

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Ahern, Janet Beautz (for Santa Cruz County Board of Supervisors), Charlie Betcher, Robert J. Boileau, William Burns, Alvin Colley, James Crettol, Michael Gallo, Dave Hennessy, Dennis Herrera, Nettie Hoge, Walter Johnson, Fred Keeley, Reggie Knox, William Knox, Bruce Livingston, Elizabeth Martin, Barbara McIver, Robert Meacher, Deidra O'Merde, Elizabeth Sholes, Mary Frances Smith, Ladan Sobhani, Peter Van Zant, Mary Ann Woomer, and Carl Zichella,

Complainants

vs.

Pacific Gas and Electric Company,

Defendant.

Case 02-02-027
(Filed February 27, 2002)

**ADMINISTRATIVE LAW JUDGE'S PRELIMINARY RULING
ON TURN'S NOTICE OF INTENT TO CLAIM COMPENSATION**

1. Summary

The Utility Reform Network (TURN) is preliminarily determined to be eligible to claim an award for intervenor compensation.

2. Background and Eligibility Requirements

The intervenor compensation program is set forth in Public Utilities Code Sections 1801-1812, as implemented by Decision (D.) 98-04-059 (79 CPUC2d 628) and D.99-02-039.¹ The program allows eligible public utility customers to receive compensation for reasonable fees and costs of participation in any Commission proceeding in which they are found to have made a substantial contribution. A customer who intends to seek an award of compensation must file and serve a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC).

2.1. Customer

Customer is defined as:

“‘Customer’ means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant its articles of incorporation or bylaws to represent the interests of residential customers...”
(Section 1802(b).)

These are generally referred to as Category 1, 2, and 3 customers, respectively.

2.2. NOI

An NOI must include the following:

- a. Customer: A showing that the party is a customer as defined in Section 1802(a). (D.98-04-059, mimeo., page 88, Conclusion of Law 5.)

¹ All statutory references, unless noted otherwise, are to the Public Utilities Code.

- b. **Planned Participation:** A statement of the nature and extent of the customer's planned participation as far as it is possible to set out when the notice is filed. (Section 1804(a)(2)(A)(i).)
- c. **Estimate of Compensation:** An itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time. (Section 1804(a)(2)(A)(ii).)

2.3. Significant Financial Hardship

An NOI may include a showing that participation would pose a significant financial hardship. Alternatively, that showing must be included in the request for compensation. (Section 1804(a)(2)(B).) Significant financial hardship:

“...means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” (Section 1802(g).)

A finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in other proceedings commencing within one year of the date of that finding. (Section 1804(b)(1).)

2.4. Preliminary Ruling

When an NOI includes the customer's showing of significant financial hardship, the Administrative Law Judge, in consultation with the Assigned Commissioner, must issue a “preliminary ruling.” (Section 1804(b)(1).) The ruling must address whether the customer will be eligible for an award of compensation, and whether a showing of significant financial hardship has been

made. In addition, the ruling may address issues raised by an NOI.
(Section 1804(b)(2).)

TURN included a showing of significant financial hardship in its NOI.
A preliminary ruling is required in this case.

3. Timeliness of NOI

The PHC was held on May 8, 2002. TURN filed its NOI on June 7, 2002, within 30 days of the PHC. TURN's NOI is timely.

4. Customer

4.1. Category 3

4.1.1. TURN Category 3 Showing

TURN states that it is a non-profit customer advocacy organization with a long history of representing the interests of residential and small commercial customers before the Commission. TURN asserts that: "TURN is a 'group or organization authorized pursuant its articles of incorporation or bylaws to represent the interests of residential ratepayers.'" (NOI, page 2, footnote 1.) That is, TURN claims that it is a Category 3 customer. TURN asks that it be found to be a customer as defined in Public Utilities Code Section 1802(b).

The NOI for a group must include a copy of the portion of its articles of incorporation showing that it is authorized to represent residential customers, or provide a reference to that authorization when it was presented in a previous filing. (D.98-04-059, mimeo., page 30.) TURN's NOI states that TURN provided the relevant portion of its articles of incorporation in prior NOIs (i.e., Application (A.) 98-02-017, A.99-12-024), and that its articles of incorporation have not changed since the time of those earlier submissions.

Groups must also indicate what percentage of their members are residential ratepayers. (D.98-04-059, mimeo., page 83, Finding of Fact 12.) TURN

states that it has approximately 30,000 dues paying members, of whom TURN believes the vast majority are residential ratepayers. TURN asserts that it does not poll its members in a manner that would allow a precise breakdown between residential and small business members, and a precise percentage is not available.

4.1.2. Defendant's Response

Defendant states that it does not challenge TURN's eligibility for compensation, but is concerned about who TURN represents. Defendant asserts only one named complainant states a relationship with TURN, and no other complainant states a membership in, or affiliation with, TURN. Defendant says, however, that it does not quarrel with TURN's eligibility as an intervenor.

4.1.3. Discussion

TURN's articles of incorporation authorize TURN to represent the interests of residential ratepayers. TURN's representation is not limited to TURN members. Rather, TURN is typically a party in Commission proceedings representing residential ratepayers generally. The Commission has found TURN to be a Category 3 customer in many other proceedings.

The outcome of this proceeding (whether to grant or deny the requested relief in whole or part) will affect residential customers. TURN filed an appearance on its own behalf, and is a party in this proceeding. (Reporter's Transcript, May 8, 2002, pages C and 1.) TURN represents residential ratepayers, and is a Category 3 customer.

4.2. Category 2

4.2.1. Category 2 Showing and Response

TURN further states: “In this case, TURN is also a representative authorized by customers to represent their interests.” (NOI, page 2, footnote 1.) That is, TURN asserts that it is also a Category 2 customer.

Defendant questions whether it is appropriate for TURN to receive compensation for its efforts on behalf of individual residential customers who have no stated connection with TURN. Further, defendant states that it is concerned “with the apparent request by an eligible intervenor to receive compensation for its efforts on behalf of others who may not be eligible...” (Pacific Gas and Electric Company (PG&E) Statement, page 3.) For example, defendant questions whether TURN may represent businesses or government.

4.2.2. Discussion

TURN need not demonstrate that it is a customer in both Categories 2 and 3. The question of being a Category 2 customer is moot unless TURN later declines to submit a compensation request as a Category 3 customer, but elects to seek compensation only as a Category 2 customer.

To briefly address that contingency, TURN states that it is the “lead representative of the complainants,” is “authorized by customers to represent their interests,” and “has appeared on behalf of the named complainants at the prehearing conference.” (NOI, page 1; page 2, footnote 1; and page 3.) TURN filed the complaint on behalf of all complainants. (Complaint, page 15.)

TURN convincingly shows that it is authorized by each complainant to represent that complainant’s interests. No complainant responded to TURN’s NOI to the contrary. Defendant does not compellingly allege or demonstrate

that complainants who are not members of TURN failed to authorize TURN to represent their interests.

Each complainant has signed a statement (attached to the complaint) saying that he or she is “presently a PG&E electric service customer...” This statement is understood to mean that the individual is attesting that he or she is a residential ratepayer of defendant. Absent evidence to the contrary, no individual is assumed to be without residential service.² Defendant presents no evidence that any complainant is without a residential service account. Thus, TURN is preliminarily found to be a Category 2 customer representing all 26 complainants as residential customers. If TURN later files a compensation request as a Category 2 customer, TURN must affirm or show whether each represented complainant is a residential customer of defendant.

Each statement also says: “If signing for an organization, I also represent that I am authorized to sign on behalf of that organization.”³ This is understood to be in addition to the statement that the complainant is “presently a PG&E electric service customer...” If TURN later files a compensation request as a

² A complaint must include the full name, address and telephone number of each complainant. (Rule 10 of the Commission’s Rules of Practice and Procedure.) Residential complainants, however, are not required to state the address and telephone number of their residential account. Rather, a residential complainant may use a business or other address and telephone number for the purpose of service of documents and telephone contact. A complainant’s use of a non-residential address and telephone number for purposes of filing the complaint does not demonstrate that a complainant is not a residential customer.

³ In one case, the additional statement says: “I am authorized to sign this statement on behalf of the City and County of San Francisco.” This statement, however, also follows the statement that “I am presently a PG&E electric service customer...”

Category 2 customer on behalf of any non-residential complainant, TURN must state the customer type (e.g., commercial, industrial, agricultural, governmental).

A customer:

“does not include any state, federal, or local government agency, any publicly owned utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participation in a commission proceeding.”
(Section 1802(b).)

An entity that would otherwise be ineligible to be a customer for the purposes of intervenor compensation cannot overcome that disqualification by being represented by an agent. “Government entities who wish to participate in Commission proceedings must find the necessary funds in their budgets.”
(D.96-09-040, 68 CPUC 2d 33, 35.)

In addition to any other customer status, complainant Beautz complains also on behalf of Santa Cruz County. Similarly, in addition to any other customer status, complainant Herrera also complains on behalf of the City and County of San Francisco (CCSF). TURN may represent a customer (e.g., local government agency) that is ineligible to claim intervenor compensation, but TURN may not request compensation for that representation. TURN is not a Category 2 customer for intervenor compensation purposes for Santa Cruz County and CCSF.

5. Planned Participation

TURN states that it is already an active party, and intends to maintain that status. TURN reports that it drafted and filed the complaint, appeared on behalf of named complainants at the PHC, and filed a response to PG&E’s motion to dismiss. TURN says it expects to begin discovery shortly, participate in any hearings that are conducted, and submit briefs and comments as required.

TURN claims the extent of its involvement will necessarily depend on the resources available to TURN at the time such involvement is required.

TURN satisfactorily states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed.

6. Itemized Estimate of Compensation

TURN says it currently estimates the following budget:

Attorney/Category	Hourly Rate	Hours or Cost	Total Cost
Robert Finkelstein	\$340	100 hours	\$34,000
Michael Florio	\$350	10 hours	\$3,500
William Marcus	\$175	20 hours	\$3,500
Greg Ruzovan	\$115	20 hours	\$2,300
Expenses		\$2,700	\$2,700
TOTAL			\$46,000.00

TURN cautions that this estimate is dependent upon the course of the proceeding and the Commission's final decision. TURN states that the reasonableness of the hourly rates requested for its representatives and expert witnesses will be addressed in its request for compensation, if one is ultimately filed.

TURN satisfactorily presents an itemized estimate of the compensation it expects to request.

7. Significant Financial Hardship

TURN states that it received a finding of significant financial hardship by Ruling dated December 19, 2001 in A.01-09-003.⁴ According to TURN, this proceeding commenced within one year of the date of that finding, and a rebuttable presumption of its significant financial hardship applies. (Section 1804(b)(1).)

TURN's significant financial hardship is established by unopposed rebuttable presumption. This applies to TURN's status as a Category 3 customer.

To the extent TURN later applies for intervenor compensation as a Category 2 customer, however, TURN must at that time submit evidence of the significant financial hardship for each complainant TURN represents as a Category 2 customer. Significant financial hardship might be in the form of a financial statement for each represented customer, or other compelling showing. (See D.98-04-059, mimeo., page 36; also see Ruling dated January 28, 2002 in A.01-07-004, Section 2.2.) TURN, however, is not eligible for intervenor compensation as a Category 2 customer representing Santa Cruz County or CCSF.

8. Underrepresentation, Fair Determination and Duplication

D.98-04-059 discusses review standards which pertain to the participation statements required by Section 1804(a)(2)(A). These standards are underrepresentation, fair determination, and duplication.

⁴ A.01-09-003 is the application of Pacific Gas and Electric Company in the 2001 Annual Transition Cost Proceeding for the record period July 1, 2000, through June 30, 2001.

8.1. Underrepresentation

The intent of Section 1801.3(f) is to allow intervenor compensation only for those customer interests which would otherwise be underrepresented. (D.98-04-059, mimeo., p. 25.) TURN asserts that such requirement is less relevant in a complaint proceeding since there would be no complaint absent the intervenor bringing the complaint. TURN argues it is reasonable for the Commission to find that customer interests would be underrepresented in the absence of TURN coordinating the filing of the complaint and subsequently serving as lead representative.

TURN successfully demonstrates for the purpose of a preliminary ruling that it will represent interests that would otherwise be underrepresented. If, however, any complainant later represents his or her own interests, TURN must address the matter of underrepresentation in any subsequent compensation request, and failure to do so will place TURN at risk for receiving reduced or no compensation.

8.2. Fair Determination

In addition to considering whether the interests represented by an intervenor are underrepresented, rulings on eligibility must carefully consider other factors, such as whether participation is “necessary for a fair determination of the proceeding.” (D.98-04-059, mimeo., p. 31.) According to the Commission, this means that compensation will not be awarded where the customer has argued issues that are irrelevant, outside the scope of the proceeding, or beyond the Commission's jurisdiction.

TURN successfully shows for the purpose of a preliminary ruling that its participation will be within the scope of the proceeding and is reasonably

necessary for a fair determination of the proceeding, as far as can be known at this time.

8.3 Duplication

The Commission has also stated that participation for which compensation is sought should not duplicate that of similar interests otherwise adequately represented. (Id., pp. 31-2.) TURN successfully shows for the purpose of a preliminary ruling that its participation will not duplicate that of similar interests otherwise adequately represented. TURN must, however, address this issue in any subsequent compensation request if any complainant elects to subsequently represent his or her own interests.

IT IS PRELIMINARILY RULED that:

1. The Utility Reform Network (TURN) is a Category 3 customer, and has demonstrated significant financial hardship by unopposed rebuttable presumption as a Category 3 customer.
2. TURN is a Category 2 customer representing all complainants as residential customers, but has not demonstrated significant financial hardship as a Category 2 customer. If TURN later files a compensation request on the basis of being a Category 2 customer, TURN shall affirm or show in such request whether or not each complainant is a residential customer of defendant. For each non-residential complainant, TURN shall state the customer type (e.g., commercial, industrial, agricultural, governmental). If TURN subsequently seeks intervenor compensation as a Category 2 customer, TURN shall submit a showing of significant financial hardship no later than as part of the subsequent compensation request as a Category 2 customer. TURN is not a Category 2 customer for Santa Cruz County or the City and County of San Francisco (CCSF),

and is ineligible for intervenor compensation as a Category 2 customer representing Santa Cruz County and CCSF.

3. TURN may subsequently file a request for intervenor compensation as a Category 3 customer, and need not simultaneously be a Category 2 customer.

4. TURN states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed.

5. TURN presents an itemized estimate of the compensation it expects to request.

6. TURN demonstrates that it will represent interests that would otherwise be underrepresented and that its participation will not duplicate that of similar interests otherwise adequately represented. TURN shall address these factors in any subsequent compensation request if any complainant later represents his or her own interests.

7. TURN shows that its participation is necessary for a fair determination of the proceeding.

Dated August 5, 2002, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Preliminary Ruling on TURN's Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 5, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH
Jacqueline Gorzoch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.